

FILED

SEP 30 2011

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIAUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re:)	Case No. 09-37635-B-13J
)	
HENRY APODACA,)	
)	
Debtor(s).)	Adversary No. 11-02093-B
)	
<u>HENRY APODACA,</u>)	DCN N/A
)	
Plaintiff(s),)	
)	Date: July 12, 2011
vs.)	Time: 09:32 a.m.
)	Place: U.S. Courthouse
JP Morgan Chase Bank, N.A.,)	Courtroom 32
Chase Home Finance, LLC, Long)	501 I Street
Beach Mortgage Company,)	Sacramento, CA 95814
William G. Malcolm, and Does)	
1-10,)	
Defendant(s).)	

MEMORANDUM DECISION ON MOTION TO DISMISS

This matter came on for final hearing on July 12, 2011, at 09:32 a.m. Appearances are noted on the record. At the conclusion of the hearing the court took the matter under submission. The following constitutes the court's findings of fact and conclusions of law, pursuant to Federal Rule of Bankruptcy Procedure 7052.

DECISION

The motion is granted. All claims for relief set forth in the initial complaint (the "Complaint") filed on February 8, 2011 are dismissed as to moving defendant William G. Malcolm ("Malcolm") without leave to amend. If the plaintiff wishes to include in an amended complaint claims for relief against Malcolm, the plaintiff shall file a motion requesting permission to include Malcolm in the

1 amended complaint, shall file and serve said motion on or before
2 October 18, 2011, and shall set said motion on the first available
3 calendar which provides proper notice to parties in interest. If
4 filed, the motion to amend shall include as an exhibit an unfiled copy
5 of amended complaint the plaintiff wishes to file as to Malcolm. If
6 filed, the motion to amend will also toll any existing deadline for
7 filing an amended complaint pending the resolution of the hearing on
8 the motion to amend.

9 **FACTUAL BACKGROUND**

10 By this motion Malcolm seeks dismissal of this adversary
11 proceeding under Fed. R. Civ. P. 12(b)(6), made applicable to this
12 adversary proceeding by Fed. R. Bankr. P. 7012.

13 The Complaint alleges five causes of action for 1.) Declaratory
14 Relief, 2.) Violation of 11 U.S.C. § 362(a), 3.) Violation of 11
15 U.S.C. § 362(k)(1), 4.) Violation of the Real Estate Settlement
16 Procedures Act ("RESPA"), and 5.) Civil Conspiracy.

17 The Complaint alleges that Malcolm is an attorney licensed to
18 practice in California and Texas and that Malcolm "is doing business
19 as a lender in the State of California." Compl., ¶ 13.

20 The Complaint bases its claims for relief on the following
21 alleged facts. The plaintiff debtor Henry Apodaca (the "Debtor")
22 owns real property located at 1025 Milton Street, West Sacramento, CA
23 95605 (the "Property"). The Property is the Debtor's personal
24 residence. On March 13, 2006, the Debtor executed a promissory note
25 (the "Note") payable to the order of Long Beach Mortgage Company
26 ("Long Beach"). The Note was secured by a deed of trust (the "Deed of
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1 Trust") on the Property. The Note provided for monthly payments over
2 a period of thirty years.

3 The Debtor commenced this chapter 13 bankruptcy case (the
4 "Bankruptcy Case") on August 19, 2009. JPMorgan Chase Bank, N.A.
5 ("JPMorgan") filed a secured claim (the "Claim") in the Bankruptcy
6 Case on November 5, 2009. The Claim, as initially filed, claimed a
7 balance of \$237,078.57, and included a claim for \$25,331.26 in pre-
8 petition arrears. According to the Claim, the pre-petition arrears
9 were attributable to five missed monthly payments of \$1,591.68 and
10 eight missed monthly payments of \$2,016.41. JPMorgan later amended
11 the Claim on December 2, 2009 (the "Amended Claim"). The Amended
12 Claim is filed in the amount of \$237,078.57. The Amended Claim
13 includes a \$20,691.84 claim to pre-petition arrears, which, according
14 to the Amended Claim, reflect thirteen missed payments of \$1,5901.68.
15 Malcolm filed the Claim and the Amended Claim on behalf of JPMorgan.
16 Compl., ¶ 30. The Debtor alleges that by filing the Claim, JPMorgan
17 asserted that it had obtained rights in the Note and Deed of Trust
18 from Long Beach. The Debtor alleges upon information and belief that
19 JPMorgan actually did not obtain any rights in the Note or Deed of
20 Trust, because it did "not provide either an assignment of either the
21 ownership nor Servicing rights" to the Debtor "as required by law."
22 Compl. ¶ 31.

23 The Debtor confirmed a chapter 13 plan in the Bankruptcy Case on
24 November 5, 2009. The Debtor confirmed a modified plan in the
25 Bankruptcy Case on September 10, 2010. The plan provided for payment
26 of the obligation underlying the Amended Claim with an ongoing monthly
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1 payment of \$1,606.85 and payment of a total of \$21,000.00 in pre-
2 petition arrears.

3 The Debtor alleges that "Defendant, as a matter of normal
4 business practice, conducts an 'Escrow Analysis' pursuant to RESPA
5 upon notice of a bankruptcy filing." Compl., ¶ 37. An escrow
6 analysis allegedly analyzes the advances made by the lender in the
7 twelve months prior to the bankruptcy filing for the purposes of
8 paying of property taxes, insurance and other costs related to the
9 security for a loan and projects those costs into the future in order
10 to determine the amount that the borrower will be required to pay for
11 those costs in the future. The escrow analysis also allegedly
12 compares the amounts advanced by the lender for these costs to the
13 amounts paid into an escrow account by the borrower for payment of
14 those costs; if the result shows that the lender has advanced funds in
15 excess of what the borrower has paid into the escrow account, the
16 lender will generate a notice of a post-petition increase in the
17 regular monthly mortgage payment. The increase is allegedly intended
18 to recoup the advances paid by the Defendant in excess of the payments
19 made by the borrower to the escrow account. If the borrower has filed
20 a chapter 13 bankruptcy case, the notices specifying the post-petition
21 increases in payments are allegedly sent to the debtor borrower and
22 the chapter 13 trustee.

23 The Debtor alleges that as a result of receiving a notice of a
24 post-petition payment increase, the chapter 13 trustee takes action
25 which results in the collection by the trustee of the increased
26 payment as specified in the lender's notice, which action includes
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1 objections to confirmation or motions to dismiss if the debtor is not
2 proposing to pay the full amount of the increased payment. The Debtor
3 alleges that in generating and sending the notices based on post-
4 petition escrow analyses as described above, the "Defendants" fail to
5 distinguish between pre- and post-petition escrow advances and
6 improperly collect on a claim for a pre-petition debt through the
7 ongoing monthly mortgage payment. The Debtor alleges that this
8 practice violates the automatic stay of 11 U.S.C. § 362(a).

9 In this case, the Debtor alleges that "Defendants" "have not
10 provided either an Annual Disclosure Accounting Statement or a Special
11 Escrow Analysis asserting a resulting negative escrow analysis as
12 required under the Real Estate Settlement Procedures Act." Compl. ¶
13 29. Instead, on September 22, 2010 "defendant Chase"¹ allegedly
14 notified the chapter 13 trustee of post-petition increases in the
15 monthly loan payment. According to the notice given by "defendant
16 Chase," the mortgage payment increased from \$1,606.85 to \$1,940.25
17 effective October 1, 2010. Compl., ¶ 28. The Debtor alleges that the
18 increase in the monthly mortgage payment constitutes a violation of
19 the automatic stay of 11 U.S.C. § 362(a) because by increasing the
20 monthly mortgage payment the "defendants" are attempting to recover a
21 pre-petition shortage in the Debtors' escrow account. The Debtor
22 alleges that this alleged post-petition attempt to recover a pre-
23 petition debt violates the automatic stay.

24
25 ¹The Complaint confusingly refers to JPMorgan Chase Bank as
26 both "Chase" and JPMorgan. See Compl. ¶¶ 11 and 23. The
27 Complaint also refers to named defendant Chase Home Finance, LLC
as "Chase." See Compl. ¶ 12.

1 The Debtor also alleges that the "Defendants" violated RESPA by
2 (1) failing to notify the Debtors when the note and deed of trust were
3 transferred; (2) assessing more "risk" in the Defendants' escrow
4 analysis calculations than is allowed by RESPA; (3) improperly
5 accessing the escrow account for payment of property taxes and
6 insurance; (4) failing to credit back charges improperly force-placing
7 insurance when the Debtors had paid for insurance himself; and (5)
8 performing an improper escrow analysis that resulted in incorrect
9 notices of increase in payments. The Debtor specifically cites 12
10 U.S.C. § 2604 as the basis for their claims for RESPA violations.

11 Finally, the Debtor alleges that the "assignees and/or successors
12 in interest" to the note and deed of trust, were assisted and
13 represented by "Defendants" in a civil conspiracy for the purpose of
14 recouping pre-petition claims from post-petition estate property
15 resulting in systematic injury to debtors by means of the allegedly
16 improper escrow analyses described above, concealing the post-petition
17 collection of pre-petition claims, and objecting to confirmation of
18 chapter 13 plans based on the improper escrow analyses. The Debtor
19 alleges that "some Defendants systematically earn attorney fees based
20 on a privity with each of the assignees an/or successors in interest
21 during this bankruptcy case," Compl. ¶ 89, and alleges that
22 "Defendants" have a duty to counsel "each of the assignees and/or
23 successors" regarding the provisions of 11 U.S.C. § 362(a) and the
24 fact that the alleged improper escrow analysis violates the automatic
25 stay.

ANALYSISThe Law Applicable to A Motion to Dismiss

The following sets forth the legal standard for dismissal of a complaint where the complaint fails to state a claim on which relief may be granted:

The purpose of a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, made applicable here under Fed. R. Bankr. P. 7012, is to test the legal sufficiency of a plaintiff's claims for relief. In determining whether a plaintiff has advanced potentially viable claims, the complaint is to be construed in a light most favorable to the plaintiff and its allegations taken as true. Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974); Church of Scientology of Cal. v. Flynn, 744 F.2d 694, 696 (9th Cir.1984). . .

Quad-Cities Constr., Inc. v. Advanta Bus. Servs. Corp. (In re Quad-Cities Constr., Inc.), 254 B.R. 459, 465 (Bankr. D. Idaho 2000).

In addition, under the Supreme Court's most recent formulation of Rule 12(b)(6), a plaintiff cannot "plead the bare elements of his cause of action, affix the label 'general allegation,' and expect his complaint to survive a motion to dismiss." Ashcroft v. Iqbal, 129 S.Ct. 1937, 1954 (2009). Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. See Bell Atl. Corp. v. Twombly, 127 S.Ct. 1955, 1964-66 (2007). ("[A] plaintiff's obligation to provide 'grounds' of his 'entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.").

1 Factual allegations must be enough to raise a right to relief above
2 the speculative level. Id., citing to 5 C. Wright & A. Miller, Fed.
3 Practice and Procedure § 1216, at 235-36 (3d ed. 2004) ("[T]he
4 pleading must contain something more. . . than . . . a statement of
5 facts that merely creates a suspicion [of] a legally cognizable right
6 of action").

7 In addition, the court notes the following:

8
9 A dismissal under Rule 12(b)(6) may be based on the lack of
10 a cognizable legal theory or on the absence of sufficient
11 facts alleged under a cognizable legal theory. Navarro v.
12 Block, 250 F.3d 729, 732 (9th Cir. 2001); Balistreri v.
13 Pacifica Police Dep't., 901 F.2d 696, 699 (9th Cir. 1988). .
14 . the Court is not required "to accept as true allegations
15 that are merely conclusory, unwarranted deductions of fact,
16 or unreasonable inferences." Spewell v. Golden State
17 Warriors, 266 F.3d 979, 988 (9th Cir. 2001). Courts will not
18 "assume the truth of legal conclusions merely because they
19 are cast in the form of factual allegations." Warren v. Fox
20 Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003);
21 accord W. Mining Council v. Watt, 643 F.2d 618, 624 (9th
22 Cir. 1981). Furthermore, courts will not assume that
23 plaintiffs "can prove facts which [they have] not alleged,
24 or that the defendants have violated . . . laws in ways that
25 have not been alleged." Assoc. Gen. Contractors of Cal.,
26 Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 526;

1 103 S. Ct. 897, 74 L. Ed. 2d 723 (1983). . .
2 Toscano v. Ameriquest Mortg. Co., 2007 U.S. Dist. LEXIS 81884 (E.D.
3 Cal. 2007).

4 If a Fed. R. Civ. P. 12(b)(6) motion to dismiss is granted,
5 "[the] court should grant leave to amend even if no request to amend
6 the pleading was made, unless it determines that the pleading could
7 not possibly be cured by the allegation of other facts." Lopez v.
8 Smith, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc), quoting Doe v.
9 United States, 58 F.3d 494, 497 (9th Cir. 1995). In other words, the
10 court is not required to grant leave to amend when an amendment would
11 be futile. See Toscano, 2007 U.S. Dist. LEXIS 81884 (citing Gompper v.
12 VISX, Inc., 298 F.3d 893, 898 (9th Cir. 2002)).

13
14 Dismissal of Malcolm Without Leave to Amend

15 The court now addresses each of the Debtor's claims for relief
16 with respect to Malcolm.

17 *1. First Claim for Relief: (Declaratory Relief)*

18 This claim for relief is dismissed as to Malcolm without leave to
19 amend.

20 The facts alleged by the Debtor establish the existence of a
21 dispute between the Debtor and some of the named defendants regarding
22 the correct amount of the ongoing monthly payments to be made by the
23 Debtors under their note and deed of trust obligations, the correct
24 method by which the escrow analysis should be prepared, and the proper
25 amount of the pre-petition claim based on the note and deed of trust
26 obligation.

1 However, despite the conclusory allegation in the Complaint that
2 Malcolm is "doing business as a lender in the State of California,"²
3 the Complaint does not allege any facts that support the existence of
4 a dispute regarding the correct amount of the monthly payments under
5 the Note or the correct method by which the escrow analysis should be
6 performed as between the Debtor and Malcolm. Instead, the allegations
7 in the Complaint support the existence of an ongoing lender-borrower or
8 debtor-creditor relationship between JPMorgan and the Debtor or Chase
9 and the Debtor. Thus, the dispute that the Debtor asserts requires
10 declaratory relief in this adversary proceeding does not include
11 Malcolm as a party.

12
13 2. *Second Claim for Relief (Violation of 11 U.S.C. § 362(a))*

14 This claim for relief is dismissed as to Malcolm without leave to
15 amend.

16 In connection with his claim for violation of the the automatic
17 stay of 11 U.S.C. § 362(a), the Debtor alleges that Malcolm filed the
18 Claim and the Amended Claim on behalf of JPMorgan. No other conduct
19 is ascribed to Malcolm, except to the extent that he is included in
20 the Complaint's myriad references to "Defendant," "Defendants," or
21 "defendants." As discussed above, the Complaint's factual allegations
22 support an ongoing lender-borrower or debtor-creditor relationship
23 between the Debtor and JPMorgan and/or Chase. As a result, despite
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25 ²The Complaint alleges no other facts that, if proven, would
26 support a finding that Malcolm is in fact "doing business as a
27 lender." The Complaint does not allege that Malcolm extended a
loan to the Debtor or any other party.

1 the Complaint's allegation that Malcolm is "doing business as a
2 lender," the allegedly improper escrow analysis that resulted in a
3 post-petition increase in the Debtor's monthly payment cannot be
4 attributed to Malcolm under the facts alleged in the Complaint. The
5 Complaint also does not allege that Malcolm sent the notice of post-
6 petition payment increase to the Debtor and the chapter 13 trustee;
7 the Debtor alleges that "defendant Chase" sent the notice.

8 As a result, the only allegedly violative conduct ascribed to
9 Malcolm is the filing of the Claim and the Amended Claim. The filing
10 of a proof of claim in a bankruptcy court - even one that a debtor
11 objects to as incorrect - does not violate the automatic stay.
12 Campbell v. Countrywide Home Loans, Inc., 545 F.3d 348, 356 (5th Cir.
13 2008). As a result, the second claim for relief is dismissed as to
14 Malcolm without leave to amend.

15
16 *3. Third Claim for Relief (Violation of 11 U.S.C. § 362(k))*

17 This claim for relief is dismissed as to Malcolm without leave to
18 amend.

19 The third claim for relief alleges a violation of 11 U.S.C. §
20 362(k)(1). Section 362(k)(1), however, does not create a right of
21 action but governs the available remedies and measure of damages for a
22 violation of a stay provided by § 362. As a result, because the
23 Debtor cannot state a claim for a violation of § 362(k)(1), the claim
24 is dismissed without leave to amend.

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1 4. *Fourth Claim for Relief (Violation of Real Estate Settlement*
2 *Practices Act (RESPA))*

3 This claim is dismissed as to Malcolm without leave to amend.

4 The fourth claim for relief alleges that the "Defendants"
5 violated RESPA by (1) failing to notify the Debtor when the note and
6 deed of trust were transferred; (2) assessing more "risk" in the
7 "Defendants'" escrow analysis calculations than is allowed by RESPA;
8 (3) improperly accessing the escrow account for payment of property
9 taxes and insurance; (4) failing to credit back charges improperly
10 force-placing insurance when the Debtor had paid for insurance
11 himself; and (5) performing an improper escrow analysis that resulted
12 in incorrect notices of increase in payments.

13 As discussed above, despite the Complaint's conclusory allegation
14 that Malcolm is "doing business as a lender" the Complaint's factual
15 allegations only support an ongoing lender-borrower or debtor-creditor
16 relationship between the Debtor and JPMorgan and/or Chase. As Malcolm
17 points out, RESPA applies only to lenders and loan servicers. In re
18 Madera, 363 B.R. 718, 731 (Bankr. E.D. Pa. 2007). The facts alleged
19 in the Complaint do not establish that Malcolm is either a lender or a
20 loan servicer, or that Malcolm had any duty imposed by RESPA with
21 respect to the Debtor. As a result, the fourth claim for relief is
22 dismissed as to Malcolm without leave to amend.

23 The Debtor's argument that the fourth claim for relief should not
24 be dismissed as to Malcolm because he was acting as an "agent for the
25 creditor" (Dkt. 30 at 6) and "has an extra duty to insure that all
26 notices sent to the debtor and the Chapter 13 trustee are correct" is
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1 not persuasive. The Debtor cites no authority supporting the
2 imposition of an "extra duty" under RESPA on Malcolm, and alleges no
3 facts that indicate that Malcolm did any act outside of the scope of
4 his role as an agent that would expose Malcolm himself, as opposed to
5 his client, to liability.

6
7 5. *Fifth Claim for Relief (Civil Conspiracy)*

8 This claim is dismissed as to the Malcolm without leave to amend.

9 Civil conspiracy is not an independent tort. Instead it is
10 "merely a mechanism for imposing vicarious liability; it is not itself
11 a substantive basis for liability. Each member of the conspiracy
12 becomes liable for all acts done by other pursuant to the conspiracy,
13 and for all damages caused thereby." Favila v. Katten Muchin Rosenman
14 LLP, 188 Cal.App.4th 189, 206 (2010). A civil conspiracy is
15 "activated by the commission of an actual tort." Applied Equip. Corp.
16 v. Litton Saudi Arabia Ltd., 7 Cal.4th 503, 511 (1994).

17 In addition, "[t]he basis of a civil conspiracy is the formation
18 of a group of two or more persons who have agreed to a common plan or
19 design to commit a tortious act. The conspiring defendants must also
20 have actual knowledge that a tort is planned and concur in the
21 tortious scheme with knowledge of its unlawful purpose. However,
22 actual knowledge of the planned tort, without more, is insufficient to
23 serve as the basis for a conspiracy claim. Knowledge of the planned
24 tort must be combined with intent to aid its commission." Id. (citing
25 Kidron v. Movie Acquisition Corp., 40 Cal.App.4th 1571, 1582 (1995)).

26 Here, the Debtor alleges that the "Defendants assist the
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1 assignees and/or successors in interest" to the promissory note and
2 deed of trust in connection with recouping pre-petition claims from
3 post-petition estate property resulting in systematic injury to Debtor
4 by means the allegedly improper escrow analyses described above,
5 concealing the post-petition collection of pre-petition claims, and
6 objecting to confirmation of chapter 13 plans based on the improper
7 escrow analyses. Additionally, the Debtor alleges "some Defendants
8 systematically earn attorney fees based on a privity with each of the
9 assignees and/or successors in interest during this bankruptcy case."
10 These allegations, however, are not sufficient to state a claim that
11 any of the named defendants were involved in a civil conspiracy. The
12 Debtor has not alleged any agreement between any of the named
13 defendants to a common plan or design to commit a tortious act, nor
14 have they alleged that any of the named defendants had actual
15 knowledge that a tort was planned and that they concurred in the
16 tortious scheme with knowledge of its unlawful purpose. This claim
17 for relief also suffers from defects that are found throughout the
18 Complaint in that this claim for relief also fails to distinguish
19 between any of the named defendants with respect to the alleged civil
20 conspiracy.

21 The Debtor has also not surmounted the procedural hurdle of Cal.
22 Civ. Code § 1714.10 with respect to Malcolm. Section 1714.10
23 prohibits claims for relief against an attorney for civil conspiracy
24 which is based on the attorney's representation of the client from
25 being included in a complaint unless the court enters an order
26 allowing the pleading that includes the claim for civil conspiracy
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1 after the court determines that the party seeking to file the pleading
2 has established a reasonable probability of prevailing in the action.
3 Cal. Civ. Code § 1714.10(a). There are two exceptions to the
4 procedural hurdle of § 1714.10(a): (1) where the attorney has an
5 independent legal duty to the plaintiff, or (2) the attorney's acts go
6 beyond the performance of a professional duty to serve the client and
7 involve a conspiracy to violate a legal duty in furtherance of the
8 attorney's financial gain. See also Favila, 188 Cal. App. 4th at 207-
9 210. In this adversary proceeding the court has not entered an order
10 authorizing the filing of a claim for civil conspiracy against
11 Malcolm, and the Debtor has not alleged any facts which establish one
12 of the exceptions described above.

13 5. *Leave to Amend*

14 The court recognizes that it "should grant leave to amend even if
15 no request to amend the pleading was made, unless it determines that
16 the pleading could not possibly be cured by the allegation of other
17 facts." Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc),
18 quoting Doe v. United States, 58 F.3d 494, 497 (9th Cir. 1995). In
19 other words, the court is not required to grant leave to amend when an
20 amendment would be futile. See Toscano, 2007 U.S. Dist. LEXIS 81884
21 (citing Gompper v. VISX, Inc., 298 F.3d 893, 898 (9th Cir. 2002)). In
22 this case, the court dismisses Malcolm without leave to amend because
23 the Debtor has not alleged any facts that suggest that Malcolm's role
24 in the present controversy was anything other than as bankruptcy
25 counsel for JPMorgan and/or Chase, performing tasks that are typical
26 for a creditor's counsel in a bankruptcy proceeding. The fact that
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1 the debtor disagrees with the creditor's calculation of the ongoing
2 monthly payment, and the fact that the alleged improper calculation
3 might be construed as an improper attempt to collect a pre-petition
4 debt does not automatically put Malcolm, as the creditor's agent, at
5 fault. Furthermore, if the Debtor believes that he can allege facts
6 constituting a claim for relief against Malcolm consistent with the
7 provisions of Federal Rule of Bankruptcy Procedure 9011, the court has
8 given the Debtor the opportunity to file a motion to request leave to
9 amend the Complaint.

10 The court will issue a separate order consistent with this
11 ruling.

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14 Dated: SEP 30 2011

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16 United States Bankruptcy Judge
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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

CERTIFICATE OF SERVICE

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was served by mail to the following entities listed at the address(es) shown below.

Office of the US Trustee
501 I St, Ste 7-500
Sacramento, CA 95814


Peter Macaluso
7311 Greenhaven Dr #100
Sacramento, CA 95831

Vincent Novak
425 Market St
San Francisco, CA 94105

Henry Apodaca
1025 Milton St
West Sacramento, CA 95605

DATED: OCT - 3 2011

By: _____


Deputy Clerk